IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1957 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VAHANVATI AGRO CENTRE

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1957 of 2002

MR MEHUL SHARAD SHAH for Petitioner No. 1-6

Mr L R Pujari, APP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 18/12/2002

ORAL JUDGEMENT

Rule. Mr L R Pujari, learned APP waives service of notice of rule on behalf of the respondents. By consent of the parties, this matter is being heard and disposed of finally.

2. This is an application under section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code) for quashing a complaint filed by respondent no.2 herein before the learned Judicial Magistrate First Class at Sidhpur in Mehsana District for offence punishable under sections 3,17 and 18 read with section 29 of the Insecticides Act, 1968 (for short, 'the Act'). The said complaint has been registered before the said Court as criminal case No.728/98.

3. It was alleged in the said complaint by the second respondent that the second respondent was working as an Agricultural Inspector in Agriculture Department at Sidhpur in Mehsana District. That it was his function and duty to collect samples of insecticides and fertilizer for being sent to appropriate laboratory for chemical test. This respondent also alleged in the said complaint that the first petitioner herein is dealing in sale and purchase of insecticides at Sidhpur. That petitioner no.2 is a responsible partner of the said firm - petitioner no.1. That petitioner no.3 is a distributor. That petitioner no.4 is a responsible partner of the distributor, petitioner no.3. That petitioner no.5 has been manufacturing insecticides at village Derol in Kalol Taluka of Panchmahals District. That petitioner No.6 is a responsible person of the producer-petitioner no.5.

4. The contesting respondent has also alleged in the complaint that on 6.8.1997 the second respondent visited the shop of the first petitioner at Sidhpur and collected a sample of insecticides Monochrotophos - 36 p.c. manufactured by the above said company. That appropriate procedure was followed for collecting the sample. The sample was divided into three parts. That one of the parts was handed over to a responsible person of the first petitioner and the second part was sent to the Assistant Director of Agriculture (Insecticide Analyst) on 11.8.1997 for chemical test and analysis and the third part was retained by the second respondent in a sealed condition.

5. The second respondent also alleged in the complaint that the said sample was tested at the aforesaid laboratory and a report was sent by the said Laboratory on 1.9.1997 with an opinion that the said

sample was not in accordance with the standard. It was stated in the report that instead of 36 w/w the ingredient content was 32.78 p.c. w/w. That therefore, the said sample did not tally with the details stated on the packet as per the said Act. That therefore, show cause notice was issued to the petitioners and thereafter the complaint was filed by the second respondent against all the petitioners on 11.6.1998 before the said court. The said court registered the complaint and issued summons against the petitioners. Feeling aggrieved by the said complaint and the order for the issue of summons, the petitioners, herein, have preferred this application before this court for quashing the said complaint. It has been mainly contended that though the sample was collected by the second respondent on 6.8.1997 and though it was found to be improper on 1.9.1997, the complaint was filed very late on 11.6.1998. That at that time the expiry date had also passed and, therefore, the petitioners could not apply for a second test before the Central Laboratory and, therefore, the valuable right of the petitioners for having a second test and a second opinion from the Central Laboratory has been taken away and violated. The complaint could not proceed further as serious prejudice has been caused to the petitioners and thus the complaint be quashed and set aside.

6. As said above, Notice was issued at the first instance and Rule was issued today. I have heard the learned Advocate for the petitioners and the learned APP for the respondents, who have taken me through the complaint and the legal aspects of the case.

7. It is not in dispute that the insecticides in respect of which sample was collected by the second respondent was actually manufactured in August, 1996 and as such the date of expiry was in January, 1998. The following table will help us in appreciating the arguments of the learned Advocates for the parties:

1. Date of Manufacturing - August, 1996

2. First time sample was taken - 18.09.1996

3. Report of the analyst - 15.10.1996

4. Second time sample was collected from the same lot and batch - 06.08.1997

5. Report of the analyst - 01.09.1997

6. Show cause notice - 15.09.1997

7. Reply given by the petitioner- 01.10.1997

8. Date of expiry - January 1998

9. Date of complaint - 11.06.1998

8. The above table makes it clear that the second respondent had collected one sample on 15.09.1996 and the report was sent on 15.10.1996. It is not much in dispute that the said insecticides sample was found in order. However, second sample was collected from the same batch on 6.8.1997 and the said report was ready on 1.9.1997 and yet the complaint was not filed till December, 1997. It is also not much in dispute that the date of expiry was shown to be in January, 1998. This was a fact within the knowledge of the second respondent and, therefore, he ought to have filed complaint well before the date of expiry i.e. January, 1998. It is required to be seen that the show cause notice was issued on 15.9.1997 and the reply was given on 1.10.1007. There also the petitioners had requested the second respondent to have second opinion from the Central Laboratory, yet the second respondent neither sent the third part of the sample for second opinion nor had he filed complaint before January, 1998. However, the complaint was filed only on 11.6.1998.

9. It is very clear that before filing the complaint on 11.6.1998, the expiry date had already gone in January, 1998. Therefore, there was no purpose in sending the third part of the sample for second opinion to the Central Laboratory. This means that the petitioners could not apply after the institution of the complaint, before the trial court for having a second opinion by referring the third part of the sample to the Central Laboratory. On this aspect of the case, it would be worthwhile to consider the provision made in sub-section (4) of section 24 of the Insecticides Act, 1968, which is reproduced hereunder for ready reference:

"(4) Unless the sample has already been tested or analysed in the Central Insecticides Laboratory, where a person has under sub-section (3), notified his intention of adducing evidence in controversion of the Insecticide Analyst's report the Court may, of its own motion or in its

> discretion at the request either of the complainant or of the accused, cause the sample of the insecticide produced before the Magistrate under sub-section (6) of section 22 to be sent for test or analysts to the said laboratory, which shall, within a period of thirty days, make the test or analysts and report in writing signed by, or under the authority of, the Director of the Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein."

The above provisions make it clear that the Court has discretion to refer third part of the sample for second opinion. Same way, the Court can also exercise this power of referring third part of the sample for second opinion on a request made in this behalf either by the complainant or by the accused. It is clearly shown that even the petitioners being accused persons in the aforesaid complaint, were at liberty to request the learned Magistrate to refer third part of the sample for a second opinion from the Director of the Central Insecticides Laboratory. In the present case, we find that the expiry date had already gone before filing of the complaint by the second respondent and, therefore, the petitioners herein could not request the trial court to refer the third part of the sample for a second opinion to Director of the Central Insecticides Laboratory in accordance with the provisions made in sub-section (4) of section 24 of the said Act, after institution of the impugned complaint.

10. An attempt was made to show that the petitioners could request the trial court for a reference of the third part of the sample for a second opinion even before filing of complaint. It seems that there is no justification for advancement of the said argument in view of the provisions made in sub-section (3) and (4) of section 24 of the said Act. On a combined reading of these two provisions, I am of the opinion that a request can be made either by the petitioners or by the second respondent to the learned Magistrate concerned for having a second opinion with respect to the third part of the sample only in a pending proceeding. This would mean that the petitioners or the second respondent, as the case may be, could move the learned Magistrate in a pending proceeding only. This would further mean that before a request could be made either by the petitioners or by the second respondent for a reference under sub-section (4) of section 24 of he said Act and criminal proceeding must be pending before the trial court. In

the present case, we find that till the passage of expiry, no such complaint was filed and, therefore, no criminal proceeding was pending and as such neither the petitioners nor the second respondent could make such request to the trial court. It is, therefore, clear that there was a right vested in the petitioners for having a second opinion from the Director of Central Insecticides Laboratory and such a right has been lost as the complaint has been filed very late after the expiry date had gone. This aspect was required to be considered by this Court in Criminal Misc. Application No.5210/2000, (Coram: C K Buch, J.) in order dated 30.1.2002 wherein the following observations were made:

"I have carefully considered the relevant scheme of the Act reflecting in sections 3(k), 29, 24(1) and 24(3) & (4) of the Act. Ld. Counsel Mr Lakhani for the petitioners has rightly placed reliance on the decision of the Apex Court in the case of the State of Haryana v. Unique Farmaid P.Ltd., reported in 1994(4) Recent Criminal Reports (Criminal) 540 (SC), wherein the Apex Court through Hon'ble Mr Justice Wadhwa has held that if the sample of Insecticide found to be misbranded by Insecticides Analyst, it is the privilege of the accused to send the second sample to the Central Laboratory. If such a request to send the second sample to Central Laboratory is made to the authorities, then the same should be analysed by the Analyst before the shelf life expires. In the case before the Apex Court, accused were summoned by the court when shelf life of the sample had expired. In the case on hand, the accused were summoned much prior to the date of expiry of shelf life of the sample and they had also requested to send the second sample to the Central Laboratory. Petitioners' application was not heard and decided well in time and I am told that on technical ground of non-payment of costs, complainant Inspector had not even cared to tender the sample before the Court. I have gone through the order passed by the ld.Chief Judicial Magistrate. The petitioners were asked to pay specific amount by way of costs in advance nor payment of costs was as a condition precedent. Irrespective of this part of the fact situation, the order of the ld. Chief Judicial Magistrate is of the date after the expiry day of shelf life of the sample. In short, the petitioners can legitimately say that they are deprived of their

valuable right to get second sample re-tested by the Central Laboratory. The Apex Court, accepting the contentions of the accused, quashed the proceedings by upholding the findings recorded by Punjab & Haryana High Court. It is not necessary for this Court to quote relevant paras 10 and 12, but it would be proper to say that the reasons given and ratio propounded in the aforesaid decision squarely applies to the facts of the present case.

7. In the same way, decision of the Punjab & Haryana High Court in the case of M/s. Solar Syndicate, Dungri v. State of Punjab, reported in 1994(1) Recent Criminal Reports (Criminal) 140, also helps the present petitioners because sample of Insecticide of the same batch seized from the other two persons but same was found to be according to specifications and, therefore, the court held that report in the instant case can be said to be defective and hence accused needs acquittal. Of course, this view was taken at the conclusion of trial, but the present petitioners can still submit that in view of the legal proposition, they should not be asked to continue with criminal prosecution. It is rightly submitted that such exercise would be in futility. It is not a matter of dispute that sample of the very insecticide taken from other shop and sent to very Laboratory for analysis ha not been declared misbranded. Scope of error by Analyst who examined the sample in the instant case, cannot be ignored because samples are manufactured in the same batch. The prosecution cannot be continued for the sake of continuing in view of facts and circumstances as above and in view of the settled legal position. Ld. Chief Judicial Magistrate ought to have accepted the pleas advanced by petitioners after careful perusal of record and settled legal position."

11. Even in the case of State of Haryana v. Unique Farmaid P.Ltd. & Ors., reported in 1999(10)SRJ 129, the Hon'ble the Supreme Court was pleased to observe that the respondents were deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under sub-section (4) of section 24 of the Act and that the said right has been lost and the accused has been deprived of the said valuable right of having second test which is conclusive and final even in accordance

with the provisions made under the Act. The Supreme Court also found that serious prejudice has been caused to the defence of the accused persons. The above decision will squarely apply to the present case also. In the present case also, the complaint has been filed after the expiry date had gone. Therefore, the petitioners could not avail of their right for requesting the trial court for getting a second opinion by referring the third part of the sample to the Director of Central Insecticides Laboratory. Here also a valuable right was conferred on the petitioners by sub-section (4) of section 24 and the petitioners are deprived of the said valuable right and, therefore, a serious prejudice has been caused to their defence. It is required to be considered that a sample was collected from the said batch on 18.9.1996 and the said sample was found confirming with the standards and specifications of the said Act. The second sample was taken from the said batch and it was not found to be confirming with the standards laid down by the said Act. Therefore, the petitioners would naturally be entitled to have a second opinion in accordance with the provision made in sub-section (4) of section 24 of the Act. With a view to provide the said opportunity, the second respondent ought to have filed complaint before the expiry date since no purpose would be served by referring a sample for second opinion after the expiry date had gone. In above view of the matter, serious prejudice has been caused to the defence of the petitioners as they are deprived of their valuable right vested in them under sub-section (4) of section 24 of the Act. Under the aforesaid circumstances, no useful purpose would be served by permitting further prosecution of the complaint before the trial court. Since the aforesaid point will come in the way of the prosecution even at the end of the trial then in that case, it would not be useful to permit further prosecution in the matter. The only alternative left now is to quash the complaint at this stage.

12. For the foregoing reasons, this petition is allowed. Criminal Complaint no.728/98 pending before the learned Judicial Magistrate First Class, Sidhpur in Mehsana District, is ordered to be quashed and set aside. Rule is made absolute.

18.12.2002 [D P Buch, J.]
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